

COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair
DELEGATE DANIEL MARSHALL, III, Vice-chair
ELIZABETH A. PALEN, Executive Director



GENERAL ASSEMBLY BUILDING
201 NORTH 9th STREET, SECOND FLOOR
RICHMOND, VIRGINIA 23219
(PHONE) 804-786-3591 ext. 259
(FAX) 804-371-0169
epalen@dls.virginia.gov
<http://dls.virginia.gov/commissions/vhc.htm>

VIRGINIA HOUSING COMMISSION

SUMMARY

Affordable Housing, Real Estate Law, and Mortgages Work Group September 2, 2015, 10:00 A.M. House Room C, General Assembly Building

I. Call to Order - Affordable Housing, Real Estate Law, and Mortgages Work Group

Delegate Christopher Peace, *Chair*, called the meeting to order at 10:00 A.M.

Work Group members in attendance: Delegate Christopher Peace; Delegate Betsy Carr; Delegate Daniel Marshall; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Laura Lafayette, *Governor Appointee*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Heather Crislip, *HOME*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Department of Housing & Neighborhood Preservation*; Brian Gordon, *Northern Virginia Apartment Builders Association*; Kelly Harris-Braxton, *Virginia First Cities*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; Katharine Payne, *Williams Mullen*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Elizabeth Steele, *Stewart Title*; Chris Thompson, *Department of Housing and Community Development*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Senator Donald McEachin: Housing for reentering former offenders (SJ 299; McEachin; 2015) providing safe, decent, affordable housing to people reentering society form prisons and jails. (Incorporating (HJ 647; Rasoul;2015))

Offender Reentry in Virginia/Recent History

- **Senator Donald McEachin:** We need to review what laws we have on the books that govern people who are leaving jails. What barriers are there in the law about where they can reside? What options are there for emergency housing when they come out of jail? How can we improve the laws on the books?
- **Delegate Peace:** I don't believe this is a new issue. I thank you for bringing this up to the Commission.

- **Lawrence D. “Larry” Wilder, Jr.,** *Advisor for Social Entrepreneurism and Innovation of the Virginia Department of Small Business and Supplier Diversity*
 - Executive Order 11: In May 2010, Governor McDonnell directed the Office of the Secretary of Public Safety to amend and alter the Virginia Prisoner Reentry Policy Academy, originally established pursuant to Executive Order 97(October 2009) which was set to expire December 31, 2010. The Virginia Prisoner Reentry Policy Academy shall be renamed the Virginia Prisoner and Juvenile Offender Reentry Council with the aim of promoting reentry strategies for adult and juvenile offenders.
 - The Council was chaired by the Secretary of Public Safety and was comprised of many of the cabinet secretaries as well as the heads of many of the stakeholder agencies.
 - The Council was charged with:
 - Identifying barriers that exist in each member’s department or agency that may impede successful transition of offenders returning to their communities as well as developing and implementing procedures to overcome such barriers, to include job training, education, housing, and substance abuse treatment.
 - Improving collaboration and coordination of transitional services, including providing cross training; sharing information among state agencies; and developing policies, procedures, and programs with well-defined, performance-based outcomes that enhance reentry management.
 - Establishing partnerships between community colleges and the business sector to promote employment and transitional jobs for released offenders.
 - Engaging local agencies, community-based social service providers, community organizations, faith-based organizations, and other stakeholders in promoting successful reentry policies and programs.
 - Submitting a status report of actions taken to improve offender transitional and reentry services to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees no later than December 15 of each year.

- In addition, the Prisoner Reentry Coordinator, in working with the Council, was charged with developing a long-term strategic plan for achieving the goal of reducing offender recidivism for those released from incarceration. The plan set out comprehensive strategies to be employed while offenders were incarcerated and to continue following their release.
- Structure: The Council convened seven work groups and three special focus area committees. The groups covered the topics of mental health and substance abuse, local/regional jails, offender preparation, health and family reintegration, employment/education and workforce development, financial obligations, and housing.
- The focus committees addressed three populations: juveniles, veterans, and women.
- Housing Work Group: In the meetings held in 2010, the Housing Work Group reviewed the report of the previous committee and analyzed housing activities and accomplishments and remaining reentry barriers/service gaps, analyzed input from constituent groups and reviewed research, and reviewed final recommendations from other work groups for overlap, duplication, and synergy.
 - Legislative/Regulatory Barriers: “One Strike Policy” [allows public housing authorities (PHAs) to evict/ refuse to house people whose friends/relatives are suspected of using drugs], residency restrictions on sex offenders, exclusionary zoning (concentration of poverty), ex-offenders not a protected class in terms of housing discrimination, “one-size-fits-all” categories within sex offender registry, and public housing enabling legislation (geographic constraints on public housing).
 - Marketplace Barriers: lack of employment skills/opportunities of ex-offenders, land use, lack of funding for housing and supportive services, risks outweigh benefits for private investors in developing transitional housing, landlord policies, landlord and institutions' liability insurance, use of restrictive standardized rental housing applications, and lack of shared infrastructure/transportation demand for housing assistance by nonoffenders.
 - Community Barriers: Fear of perceived public safety risks, lack of understanding, NIMBY syndrome, depersonalization, focus on crime and not individual and organized opposition.

- Housing Work Group Recommendations: The Housing Work Group made an educational panel presentation to the Virginia Association of Housing and Community Development Officers (VAHCDO) at its January 2011 meeting regarding Virginia PHA's utilization of discretion in carrying out the one-strike policy on a case-by-case basis. The presentation addressed the impact of the one-strike policy, as currently implemented, on reentry of ex-offenders and the unintended consequences, including the prevention of family unification and the reduction of public housing options for adjudicated juveniles.
 - The Housing Work Group, working alongside community-based housing and other social services providers, identified best practices in the use of individual housing barrier assessments and other models to be used by the Department of Corrections (DOC) in preparing for an ex-offender's reentry.
 - The Reentry Council supported the work of the Governor's Homeless Advisory Council and the recommendations of the Homeless Advisory Council were fully considered by the Reentry Council.
 - Related actions:
 - As a result of the Reentry Council and Homelessness advisory Council's recommendations, DOC convened a discharge subcommittee to examine housing issues as they related to institutionalized persons.
 - Expected residence/homelessness upon release was added to the new DOC Correctional Offender Information System (VACORIS) to be tracked for state-involved inmates in the future.
 - The Virginia Adult Reentry Initiative Strategic Plan (VARI) outlines the use of the DOC Reentry Specialist to assist with transitional housing for subpopulations of reentering offenders that may be difficult to place (i.e., violent and sexual offenders).
- **Delegate Peace:** What if there was a focus on the juvenile reentry? Are we discussing issues with adults here?
 - **Wilder:** With juveniles, there was a reorganization of the education facilities. This was DOC, and that was where the focus was at that time. I think that's ultimately been disbanded.
- **Peace:** Do we have any data on the issue?

- **Wilder:** I don't have it today, but we do have that data.
- **Peace:** What is the current administration doing on this issue? Is the Council operational, or did it expire?
 - **Wilder:** The Governor formed a children's cabinet. We are not working on the pipeline-to-prison issue. We are also looking at place-based offenders, not just looking at juveniles.
- **Kelly King Horne, Homeward:** There is data from the DOC on the number of returning offenders who have home plans. There is a significant improvement. DOC has added reentry staff. On homelessness, we've learned a lot since 2010. There is a big difference between those coming from DOC and jail.
- **Senator George Barker:** Did I hear correctly that homelessness is more prevalent among those coming out of jail than DOC?
 - **Horne:** Yes, part of that is due to a definitional issue.
- **Barker:** Would that be because those coming out of DOC have had time to make plans?
 - **Horne:** That is a factor.
 - **Wilder:** That can also depend on the jail.

Barker: Have you done a survey of public housing authorities to see the differences in their policies? Are there any best practices out there?

- **Wilder:** We did no survey. There were best practices we looked at other places; HUD would be a good source.
- **Peace:** I don't know if our work group is an appropriate conduit for such a survey.
- **Ann Fisher, Executive Director, Virginia CARES:** [Presentation, which is available under the Materials section on the VHC website.]
- **Peace:** A criminal record is not always the main issue for an individual trying to attain sustainable housing, and deal with daily living. There are substance abuse issues and mental health issues. How can you go in and provide a healing place for recovery and daily living? How can various groups work together to create your model within another context without creating a new program?
 - **Fisher:** It would require a lot of collaboration.
- **Peace:** How can the state help implement that, or is that facilitated by the nonprofit sector? How many people on the voucher list are also offenders? I'd be interested to know that.
- **Horne:** Housing is not a silver bullet to solve the issue. Individuals in vulnerable situations do not have the tools readily available to them to help navigate through housing. Having a combination of services are important. If we only look at the housing piece, that is very shortsighted. You only allow \$200 per person?
 - **Fisher:** Yes, we allot \$200 per person per year. Our client's service dollars are very limited.

- **Horne:** Where is your funding stream coming from?
 - **Fisher:** We receive the largest portion of our fund from the General Assembly from the general fund. We receive a flow-through from community service block grant funds.
- **Senator Barker:** Virginia has the second lowest recidivism rate in the country. A lot of that is due to preparations taken before people reenter society. I believe with help from this and more stability, we can reduce recidivism even more.
 - **Fisher:** Concerning the continuum of services offered in an institution, our staff has been trained in that.
- **Barker:** Have you estimated the number of folks who would be eligible for or participate in such a program? Have you estimated a cost associated with that? What would be a suitable demonstration for such a program?
 - **Fisher:** I don't have any number for you, as this was just a rough idea. However, the planning committee is meeting to address those issues. We currently serve over 3,000 individuals in a year.
- **Laura Lafayette, Governor Appointee:** The best practice is you house people first from the housing advocacy position. I'd like to hear some data on the scale of the challenge. How many people have an opportunity to go back to housing with relatives versus those in SRO or getting a voucher? I'm trying to understand scale so we can have a strategic response.
- **Peace:** How do we identify that? Who is doing that? I agree with Laura Lafayette that the scale is very important.
- **Lafayette:** Where are investments currently in reentry? Can we align those investments with what's working? What seems to be working is wraparound services and a holistic approach.
- **Sharon Murphy, Community Engagement Coordinator, OAR of Richmond, Inc.:** Our clients all share a stigma. The cycle of ending up back in jail usually includes mental health problems and substance abuse problems. With the DOC, they have an opportunity to work, and our clients then get job experience. We are trying to treat our clients holistically as human beings. Unfortunately, housing is an area of concern.
 - The folks that come out from the jail, we make sure their mental health and substance abuse problems are addressed. We create resumes and help them with their job interviews. We offer GED classes. None of our clients are mandated to come. Everyone wants to make a positive, but scary change. In the last year we doubled the amount of stable employment.
 - When most of our clients find housing it is in boarding houses. Once they have an income, they usually earn less than \$10 an hour. They often have fines to pay in the thousands of dollars.
- **Chip Dicks, Virginia Association of Realtors:** I was asked to give perspective from the housing providers. Concerning sex offenders, we are a "buyer beware" state, where the buyer has to find the information regarding sex offenders. With respect to tenancies and

sex offenders, you cannot allow them to live in a public housing community. It is not unlawful for the landlord to decline tenancy for anyone who provides a threat of present harm. The rental application may require a disclosure of a criminal record. It is a topic of debate whether someone with a record provides a threat of present harm. The property manager is also at risk of liability if there is another crime.

- Most landlords use a “tenant selection criteria.” What we suggest is that a clear and present threat is within the timeframe of five to seven years. People with substance abuse issues are also handled with an entirely different section of the law.
- **Peace:** Does the five to seven years apply across the board, or is someone with their rights restored by the Governor taken into account?
 - **Dicks:** Our advice is five to seven years, but other factors are taken into account. For Fair Housing Law, there needs to be some consistency. If it were included in the tenant selection criteria, then that would be fair.
- **Dicks:** Most housing providers do not do a background check but include a question asking whether you have been convicted of a felony or a charge of moral turpitude. This covers the sale and Fair Housing.
 - Regarding the one-strike rule, it is a HUD term that if you screw up and commit a crime on a property, you don’t have a right to come back. In Virginia Law, we have a nonremediable violation. If they commit a social violation or even some low-level criminal offense, then you get a 21- to 30-day notice. If the landlord then confirms the violation didn’t occur within that period, it goes away. If it reoccurs, there is a 30-day repeat notice. Thus, it is a two-strike system. If someone commits an act that is a serious criminal act and compromises health or safety in that community, then they can serve a three-day notice and then go to court of the law of detainer.
- **Senator Barker:** When the landlord has the ability not to accept someone, it puts the landlord in a difficult situation, as there are liability issues. It also makes it difficult for the tenant to get housing. Is there a better approach?
 - **Dicks:** This issue is not resolvable with the General Assembly as it’s rooted in Virginia Fair Housing Law.
- **Barker:** What about approaching it from the other side that would limit the liability?
 - **Dicks:** I think we could have an interesting conversation with the Virginia Trial Lawyers Association about that issue. Any kind of limitation of liability, we usually end up bonding with that association. Defining the liability in that area could be something to look at, but I don’t know if that would affect the federal interpretation that may be broader.
- **Lafayette:** This is a complex issue, even as sympathetic as we want to be concerning the issue.
- **Dicks:** One of the problems private landlords and housing authorities share is that if your policy says everyone over 18 must apply as a tenant or occupant, the problem is

that tenants have rental applications and background checks and an occupant is just allowed to move in. Often, someone moves a relative in who has gotten out of jail, and does not get authorized by the landlord. Citizens in housing authorities are allowed to have guns. That situation is a huge issue.

- **Peace:** It's often guests who are the problem.

The discussion concluded for this meeting with the caveat that it would be discussed again at a future meeting.

III. Public Comment

- **Delegate Peace** asked for any public comment.

IV. Adjourn

- Upon hearing no request to comment, **Delegate Peace** adjourned the meeting at 11:45 A.M.